IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1603 OF 2005

Ganapati Tukaram Kavade (deceased)
through his legal representatives ...Appellants
Vs.
Mahadeo Balwant More & Ors. ...Respondents

Mr S.G. Deshmukh for the Appellants.
Mr M.R. Suryawanshi for the Respondent No.3.

CORAM : A. S. OKA, J.
DATE : APRIL 12, 2006.

P.C.:

1. Heard the Advocates appearing for the parties.

The Appellants are the original plaintiffs. According to the case of the Appellants the father of the original Plaintiffs Tukaram was the tenant in respect of the suit lands. A submission is made that neither the said Tukaram nor the Plaintiffs were dispossessed in accordance with due process of law and their possession continues as of today. Hence, suit for perpetual injunction for protection of possession was filed which was dismissed by the Trial Court and decree of Trial Court has been confirmed in the Appeal.

2. Shri Deshmukh appearing for the Appellants submitted that though the courts below have relied

upon the orders passed under provisions of Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the said Act of 1948), there is nothing on record to show that any proceedings were taken on basis of the said orders under the said Act of 1948 for eviction of the Appellants. He placed reliance on an order made by Tahsildar under the Maharashtra Land Revenue Code, 1966 by which it was directed that for the year 1999-2000 names of the Appellants be incorporated in the cultivation column. Placing reliance on decision of the Apex Court in the case of Babu Parasu Kaikadi(Dead) by L.Rs. Vs. Babu (Dead) by L.Rs. (A.I.R. 2004 Supreme Court, Page 754), he submitted that there is no evidence of surrender of tenancy by the Appellants or their predecessor and therefore the Appellants established their possession.

3. I have considered the submissions. There is an order dated 18th August, 1964 (Exhibit 81) passed by the Agricultural Lands Tribunal under the said Act of 1948 under section 32(P) directing summary eviction of the father of the original Plaintiffs as the landlord required the suit land for personal cultivation. The order at Exhibit 82 shows that the

tenant i.e. father of the Plaintiffs was not in possession and the landlord was cultivating the land. Shri Deshmukh submitted that even in order at Exhibit 82 it is stated that the Gram Sevak should take possession from the tenant and handover possession thereof to the landlord.

4. It is not in dispute that the Appellants or their predecessor Tukaram were not entitled to claim tenancy rights after aforesaid orders were passed. The order at Exhibit 81 dated 18th August, 1964 directs summary eviction of the tenant and delivery of possession of the suit land to the land- lord. The order at Exhibit 82 records that landlord is already in possession. The said order refers to earlier order of the Agricultural Lands Tribunal declaring sale under section 32(G) ineffective. In the suit for perpetual injunction the Appellants-Plaintiffs are seeking to protect their possession on the basis of their rights as agricultural tenants. Obviously, the Appellants cannot claim the said rights in view of aforesaid the orders of the Agricultural Lands Tribunal which have attained finality. The relief of perpetual injunction under the Specific Relief Act,

1963 is a discretionary relief. Considering the orders of the Agricultural Lands Tribunal which have attained finality, the courts below were right in dismissing the suit. No interference is called for in Second Appeal under section 100 of the Code of Civil Procedure, 1908. Second Appeal is dismissed with no orders as to costs.

JUDGE